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6

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF MARIN
9

10 CHURCH OF SCIENTOLOGY INTERNATIONAL,) No. 157 680
11 a California not-for-profit)
religious corporation,)
12)
Plaintiff,)
13)
vs.)
14)
GERALD ARMSTRONG; MICHAEL WALTON;)
15 THE GERALD ARMSTRONG CORPORATION,)
a California for-profit)
16 corporation; DOES 1 through 100,)
inclusive,)
17)
Defendants.)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

AMENDED
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO COMPEL FURTHER
RESPONSES TO REQUESTS FOR
ADMISSION FROM PLAINTIFF

Date: 9/2/94
Time: 10:00 a.m.
Dept: Referee Benz
Trial Date: 9/29/94

20 I. INTRODUCTION

21 Code of Civil Procedure section 2033 (1) states in part "If
22 the party requesting admissions, on receipt of a response to the
23 requests, deems that (1) an answer to a particular request is
24 evasive or incomplete, or (2) an objection to a particular request
25 is without merit or too general, that party may move for an order
26 compelling a further response." For the purposes of the instant
27 motion, Scientology, rather than directly responding to the
28 requests at issue, interposed boilerplate objections as follows:

COPY

1 Plaintiff objects to this request for admission on the
2 grounds that it is (1) irrelevant to the subject matter
3 of the action, (2) interposed solely to harass, oppress
and annoy the plaintiff, and (3) vague, ambiguous and
unintelligible as phrased.

4 As will be discussed below, the objections are without merit
5 as well as too general.

6 **II. STATEMENT OF FACTS**

7 Plaintiff Church of Scientology International (CSI) has sued
8 Gerald Armstrong, The Gerald Armstrong Corporation, and Michael
9 Walton for allegedly fraudulently conveying a house and cash in
10 order to defeat CSI's ability to collect damages for the alleged
11 breaches of a settlement contract with Armstrong.

12 Thus, CSI's claim is necessarily predicated upon that
13 settlement contract. As matters in defense, Armstrong asserts
14 that his compliance was obtained by duress that was generated by
15 CSI's inalterable adherence to certain policies and practices.

16 In his answer Armstrong states:

17 Armstrong denies that the agreement contained carefully
18 negotiated and agreed-upon provisions. Armstrong was
19 not included in one word of the negotiations, which were
20 engineered by CSI through its fair game operations
21 toward and compromise of Armstrong's attorney, Michael
22 Flynn. Armstrong never agreed to the conditions, but
did agree with the representations of his attorney that
the conditions were unenforceable. CSI intended and
used the settlement to continue its litigation war with
Armstrong, and to extend its use of litigation to attack
its perceived enemies.

23 [Answer filed 11/30/93, at 2:4-13]

24 Foremost among said policies is that named fair game. An
25 individual or entity is subject to said policy if he is considered
26 by Scientology as an enemy. In its opinion in Church of
27 Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, the Second
28 District Court of Appeal upheld Judge Breckenridge's decision in

1 Armstrong's favor ^{1/} when Scientology first sued him and found:

2 Commencing in February 1992, the international Church of
3 Scientology issued a series of "suppressive person
4 declares" in effect labeling Armstrong an enemy of the
5 Church ... These "declares" subjected Armstrong to the
6 "Fair Game Doctrine" of the Church, which permits a
7 suppressive person to be "tricked, sued or lied to or
8 destroyed ... [or] deprived of property or injured by
9 any means by any Scientology

10 (Id. 232 Cal.App.3d at 1067) ^{2/}

11 In the current litigation, Armstrong's Eleventh Affirmative
12 defense of Duress and Undue Influence states:

13 Plaintiff is barred from bringing this action
14 against Armstrong because it implemented fair game
15 stratagems on Armstrong, his attorney Michael Flynn, and
16 upon other anti-Scientology litigants and would continue
17 such conduct against all such persons unless all such
18 anti-Scientology litigants, including Mr. Flynn, signed
19 settlement agreement substantially similar to that
20 signed by Armstrong.

21 [Answer filed 11/30/93, at 13:3-9]

22 **III. SCIENTOLOGY HAS FAILED TO SUFFICIENTLY RESPOND**
23 **TO CERTAIN REQUESTS FOR ADMISSION OF FACTS**

24 **A. The Requests Pertaining To Fair Game**

25 **1. Scientology's Objections**

26 As discussed more fully below, the requests for admission
27 which pertain to fair game are Nos. 3, 6, 7, and 8. As to each

28 ¹ A copy of this decision has been filed herein on October
29 28, 1993 as Exhibit 1.A in Vol. I of Defendants' Evidence In
30 Support Of Defendants' Motion To Commence Coordination Proceedings
31 (hereinafter "Breckenridge Opinion").

32 ² California courts of appeal are no strangers to the harm
33 wreaked by fair game. (see Wollersheim v. Church of Scientology
34 (1989) 212 Cal.App.3d 872, 888 [fair game is the modern equivalent
35 to the Christian inquisitional practice of destroying heretics by
36 stripping him of his economic, political and psychological power];
37 Allard v. Church of Scientology (1976) 58 Cal.App.3d 439, 444
38 [former Church member falsely accused by Church of grand theft as
39 part of fair game policy, subjecting him to arrest and
40 imprisonment])

1 such request, Scientology has interposed the same objection which
2 has been recited above.

3 As each item is discussed, Armstrong will address the
4 components of objection.

5 **2. Request No. 3**

6 Request No. 3 asks plaintiff to admit that from 1984
7 through 1986 it or its agents took action to accuse Armstrong's
8 former counsel, Michael Flynn, "with attempting to have cashed a
9 check on an account of L. Ron Hubbard at the Bank of New England."

10 Part of the fair game action taken by Scientology against
11 Flynn was to publicly attack his reputation by characterizing him
12 as a criminal. (See Separate Statement of Requests and Responses
13 in Dispute) One element of Armstrong's theory of defense is that
14 in consequence of the pressure generated by the fair game
15 activities that Scientology imposed on Flynn, Flynn coerced
16 Armstrong into signing the settlement contract. Based upon
17 Armstrong's affirmative defense, it is clear that this request is
18 relevant to the subject matter of the litigation. (C.C.P. § 2017
19 (a); Colonial Life & Acc. ins. Co. v. Sup.Ct. (1982) 31 Cal.3d
20 785, 790; Cembrook v. Superior Court (1961) 56 Cal.2d 423, 429)
21 Thus, this request is relevant to Armstrong's defense. ^{3/}

22
23 ³ As noted in Armstrong's separate statement of requests
24 and responses in dispute, he states: "The request is relevant to
25 the subject matter of the action, interposed for legitimate
26 discovery reasons, and very clear. Armstrong contends that
27 Scientology subjected Michael Flynn to a campaign of "Fair Game"
28 which included complex intelligence and Black PR operations, and
which resulted, as Scientology intended, in Flynn's desire to get
out of Scientology-related litigation, as a defendant, plaintiff,
attorney of record or co-counsel at almost any cost. One of the
operations Scientology ran against Flynn involved accusing him in
legal proceedings, including Armstrong I, and in the international
(continued...)

1 Particularly in light of the undisputed relevance of this
2 request, Scientology's objection that the request is intended to
3 "harass, oppress and annoy" it is without basis.

4 Finally, the objection that the request is "vague, ambiguous
5 and unintelligible" is factually without merit. The request is
6 not so ambiguous that Scientology is unable in good faith to frame
7 an intelligent response. (Deyo v. Kilbourne (1979) 84 Cal.App.3d
8 771, 783; Cembrook, supra. 56 Cal.2d at 429)

9
10 ³(...continued)

11 media of participating in, indeed masterminding, the forgery of a
12 \$2,000,000 check on one of Hubbard's bank accounts. Flynn
13 represented Armstrong. To get out from under the fair game
14 attacks and threat Flynn passed on Scientology's duress to
15 Armstrong, acting as Scientology's de facto agent. Flynn told
16 Armstrong that Scientology had ruined his marriage, threatened his
17 family and law practice, and attempted to have him murdered.
18 Armstrong had himself personal knowledge of the organization's
19 illegal policies and practices, and had himself been the target of
20 fair game attacks and threat. Flynn advised Armstrong that he,
21 Flynn, had to get out of the Scientology litigation, including
22 Armstrong's case, and stated that the threats and attacks would
23 continue if Armstrong did not sign the subject settlement
24 agreement. If what Armstrong claims was done to Flynn by
25 Scientology and what Flynn told Armstrong is true, the subject
26 settlement agreement was signed under duress, is invalid, and
27 Scientology's claim of damages owed by Armstrong, on which it
28 bases its claims in this action is invalid. Scientology's years
of acts against Flynn, therefore, have undeniable relevance to
this action. CSI did not demur to or move to strike
Armstrong's verified answer herein, which contains defenses based
on such acts, thus CSI's objections to this request for admission
are unfounded and obstructive. See, e.g., eleventh affirmative
defense (Duress and Undue Influence) in Armstrong's verified
answer. Moreover, Judge Thomas ruled in his order sustaining
CSI's demurrer to Armstrong's first amended cross-complaint that
the issues (concerning Armstrong's cause of action for declaratory
relief regarding the subject agreement based on duress, etc.) will
be determined either in the Los Angeles action or in this action.
The subject matter of this request, therefore, is already ordered
relevant in CSI's clearly interrelated lawsuits against Armstrong,
and to argue that this request should not be answered because it
is not relevant in either case, but certainly where there is a
September trial date, is not done in good faith. Furthermore,
Armstrong has filed a second amended verified cross-complaint
which is based on and includes a recitation of Scientology's fair
game acts against Flynn."

1 3. Request No. 6:

2 Request No. 6 asks Scientology to admit that the
3 Guardian's Office of Scientology staff used means to deal with
4 people the Guardian's Office perceived as enemies of Scientology
5 that were against the law.

6 In addition to the arguments set forth in support of Request
7 No. 3, above, the language of this request for admission is
8 exactly what Scientology's leader David Miscavige stated in his
9 declaration executed February 8, 1994 and filed in the case of CSI
10 v. Fishman, et al. USDC for Central District of California, No. CV
11 91-6426 HLH(Tx) which is the subject of the cross-complaint. Both
12 Miscavige and CSI are knowledgeable about the Guardian's Office
13 using illegal means against its perceived enemies. Armstrong was
14 judged in Armstrong I to have been justified in sending Hubbard's
15 archival documents to his lawyers because of the threat of illegal
16 means he knew of by the Guardian's Office. Scientology still
17 maintains and still argues in dead agent packs that Armstrong was
18 not justified. At the same time when it serves its other purposes
19 it blames the Guardian's Office for criminal acts. Moreover, the
20 same illegal practices and actions, fair game, black propaganda,
21 etc. have continued with the new Miscavige regime and his new
22 Guardian's Office, the Office of Special Affairs. These illegal
23 practices have continued against Armstrong to this day, including
24 the illegal actions which resulted in the settlement agreement,
25 and the agreement itself. Armstrong is entitled to know where CSI
26 stands with respect to the practices of the Guardian's Office
27 because it cannot argue both ways; it cannot use Guardian Office
28 tactics on one hand while scapegoating it on the other.

1 4. Request No. 7

2 Request No. 7 asks Scientology to admit that the
3 Guardian's Office functions were taken over by Sea Organization
4 units, offices or organizations.

5 In addition to the arguments made in support of Requests No.
6 3 and 6, Armstrong contends that there has been a continuous chain
7 of intelligence, public relations and legal functions without
8 change of any significant kind, pursuant to Hubbard's policies,
9 orders and practices. The Office of Special Affairs is a semi-
10 autonomous unit as was the old Guardian's Office, which was an
11 admittedly criminal enterprise. (U.S. v. Heldt (D.C. Cir. 1981)
12 668 F.2d 1238; Church of Scientology v. Commissioner of Internal
13 Revenue (1984) 83 T.C. 381, 505-506, aff'd, 823 F.2d 1310 (9th
14 Cir. 1987)) The Office of Special Affairs is the secular arm and
15 function of Scientology, although Scientology claims these same
16 functions of Black Propaganda, fair game and use of the law to
17 harass and ruin perceived enemies are "ecclesiastical." (See,
18 e.g., Farny deposition at 141:3 - 142:22, 182:7-21, 183:19-184:23.
19 The Office of Special Affairs contains much of the same personnel
20 as the former "disbanded" "Guardian's Office," and contrary to
21 Miscavige's assertion that the Office of Special Affairs has no
22 executives in it who were in the earlier Guardian's Office, Lynn
23 Farny, produced by CSI as its secretary and official deposition
24 spokesman admitted that he is both an executive in the Office of
25 Special Affairs and was a member of the earlier one. (Farny
26 deposition at 124:1-6, 146:14-16.) The subject matter of this
27 request for admission goes to all of Armstrong's defenses which
28 justify every action he has taken since the 1986 settlement

1 agreement. Plaintiff has no real reason to hide the nature and
2 form of its organization, especially that of the organization
3 sector which has waged an unending legal, public relations and
4 intelligence war on Armstrong since the settlement. Armstrong has
5 a legitimate right to know what his accuser is.

6 5. Request No. 8

7 Request No. 8 asks Scientology to admit that it
8 considered that Flynn was "an enemy of plaintiff."

9 This request is obviously relevant to whether or not Flynn
10 was the subject of the fair game policy. Armstrong reasserts the
11 above arguments regarding the relevance of this request, in
12 addition to the arguments which address the other objections.
13 Additionally this request is relevant because Scientology has
14 specific policies and practices relating to the treatment of
15 enemies, which policies and practices cannot be deviated from by
16 organization members on penalty of extreme ethics punishment.
17 Scientology's policies and practices relating to its enemies have
18 been judicially observed and condemned. (See, e.g., Allard v.
19 Church of Scientology, (1976) 58 Cal.App.3d 439, 129 Cal.Rptr.797;
20 Wollersheim v. Church of Scientology, (1989) 212 Cal.App.3d 872,
21 260 Cal.Rptr.331; decision filed June 22, 1984 in Church of
22 Scientology v. Gerald Armstrong, Los Angeles Superior Court No. C
23 420153; Church of Scientology v. Gerald Armstrong (1991) 232
24 Cal.App.3d 1060, 283 Cal.Rptr.917) Scientology literature
25 contains countless uses of the term "enemy," and such is well
26 understood in the organization. There is, therefore, no
27 vagueness, ambiguity or unintelligibility to the request. The
28 request is central to Armstrong's defenses of, inter alia, fraud,

1 duress and unclean hands, is very simple, and therefore is not at
2 all harassive, oppressive or annoying. The response is evasive
3 and unfounded.

4 **IV. MONETARY SANCTIONS SHOULD BE IMPOSED**

5 Code of Civil Procedure section 2033 (1) states that the
6 Court shall impose a monetary sanction under Code of Civil
7 procedure section 2023 against any party and attorney who opposes
8 a motion to compel a further response unless it finds that the one
9 subject to the sanction acted with substantial justification or
10 that other circumstances make its imposition unjust.

11 Based upon the foregoing discussion, it is clear that the
12 only possibly valid objection was that which was based upon
13 relevance. As to each of the relevance objections, however, they
14 were interposed with no justification inasmuch as each request
15 dealt directly with the issues framed by the complaint and answer
16 in this litigation.

17 **V. CONCLUSION**

18 Based upon the foregoing arguments, defendant Gerald
19 Armstrong respectfully submits that the motion to compel further
20 responses should be granted and monetary sanctions imposed.

21 DATED: August 18, 1994

HUB LAW OFFICES

22
23
24 By: 

FORD GREENE
Attorney for Defendant and
Cross-Complainant
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following

documents: AMENDED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR ADMISSION FROM PLAINTIFF

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

MICHAEL WALTON, ESQ.
P.O. Box 751
San Anselmo, CA 94979

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
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LAURIE J. BARTILSON, ESQ.
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6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

(Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: August 18, 1994

